

What is up with DHEC and new permits for pesticide and herbicide application?



Summary: The federal courts have ruled that the application of pesticides (including herbicides) -- on or near water -- requires a permit under the federal Clean Water Act. Since DHEC is delegated to issue Clean Water Act permits (i.e., NPDES permits), DHEC now has the task to prepare a permit so applicators can be covered under a permit.

Background: The federal Environmental Protection Agency (EPA) had legal challenges to its position that application of pesticides to water did not require an NPDES permit. In 2006, EPA wrote a rule to make it clear an NPDES permit would not be needed under most circumstances. Primarily, the application of a pesticide was acceptable without an NPDES Permit if the application was made in accordance with labeling requirements mandated by another federal law -- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Court Cases: EPA was challenged on its position that NPDES permits were not needed after issuing its 2006 rule. EPA lost this case.

Legislation: A federal bill if enacted, would negate the requirement for an NPDES permit -- S.3735 & H.R. 6087. There is no certainty this bill would pass.

Does this affect farming? This new requirement would not restrict application of pesticides/herbicides on agricultural land where the application is not into water (or near water). The obligations of FIFRA would continue to apply alone.

What would be affected? The following are the initial pesticide uses that EPA expects to be covered by an NPDES permit:

- Flying pests (e.g., mosquitos)
- Aquatic weed
- Aquatic nuisance animals
- Forest canopy

Bottom Line: DHEC is on a tight schedule to issue an NPDES general permit by early 2011 so that applicators can have proper permit coverage per the federal court ruling. This permit will be one general permit for the entire state. Details about the method for getting coverage and the requirements of the permit will be determined later. EPA will need to be satisfied with this permit.

DHEC's Schedule: DHEC plans to have a draft permit for public review in late 2010. Following a review of public comments, DHEC plans to issue a permit in early 2011, so the effective date to be in early April. The court deadline for pesticide application to be covered under EPA's 2006 rule (without an NPDES permit) is April 9, 2011.

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